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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 208.

THE TEXAS AND PACIFIC RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

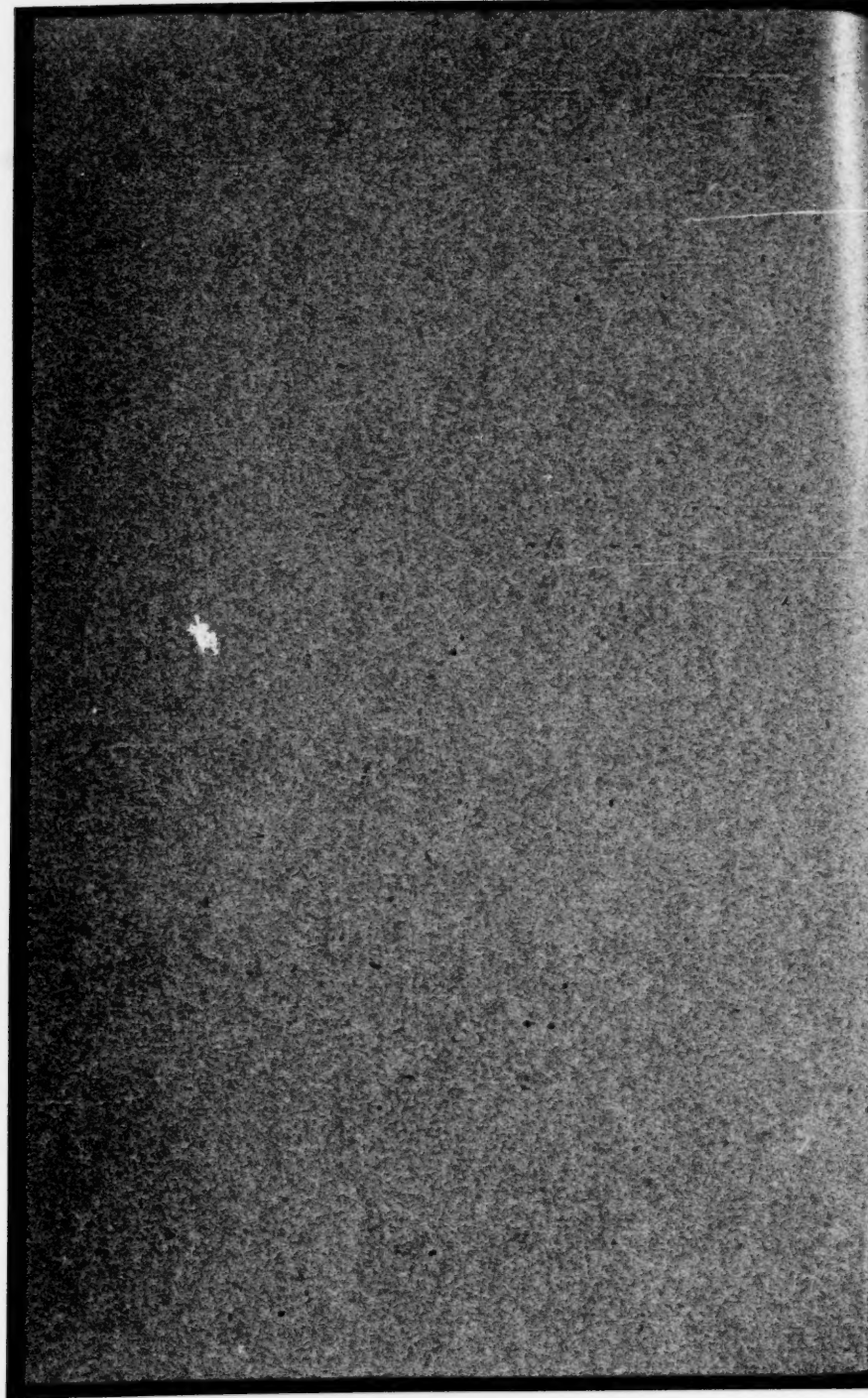
ALEXANDER REEDER.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED JULY 29, 1898.

(16,347.)

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1 & 2 UNITED STATES OF AMERICA, }
Fifth Judicial District. }

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held, pursuant to law, on the third Monday of November, A. D. 1895, in the court-room of said court, in the city of New Orleans, State of Louisiana, before the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit; the Hon. Emory Speer, United States district judge for the southern district of Georgia, and the Honorable Charles Parlance, United States district judge for the eastern district of Louisiana.

THE TEXAS & PACIFIC RAILWAY COMPANY, Plaintiff in Error, }
v.
 ALEXANDER REEDER, Defendant in Error. }

Be it remembered that heretofore, to wit, on the 4th day of April, 1896, a transcript of the record of this cause from the circuit court of the United States for the eastern district of Texas was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit in the words and figures following, to wit:

3 *Caption.*

Be it remembered, that on Wednesday, the 4th day of February, A. D. 1896, in the circuit court of the United States for the eastern district of Texas, at Jefferson, Texas, January term of said court, begun and held on the 27th day of January, A. D. 1896, and ending on February 5th, A. D. 1896, the following proceedings were had in a suit pending in said court, No. 435, Alexander Reeder vs. The Texas & Pacific Railway Company, to wit:

THE STATE OF TEXAS, }
County of Marion. }

At a term of the district court begun and holden at the city of Jefferson, within and for the county of Marion, before the Hon. John L. Sheppard, and ending on the 27th day of June, A. D. 1895, the following case came on for trial, to wit:

In the District Court, Marion County, Texas, to the June Term of said Court, 1895.

ALEXANDER REEDER	}	
vs.		
TEXAS & PACIFIC RAILWAY CO.		
ALEXANDER REEDER	}	No. 6335.
vs.		
TEXAS & PACIFIC RAILWAY CO.		

To the honorable judge of said court:

4 Your petitioner, Alexander Reeder, who is a resident citizen of the State of Kansas, complaining of the Texas & Pacific Railway Company, a corporation duly created by the laws of the United States of America, would respectfully represent unto your honor as follows, to wit:

That the defendant is a corporation engaged in the transportation of passengers, goods and property, including live stock, as a common carrier of same, on its certain railroad, owned and operated by defendant, a portion of which extends from Texarkana, Texas, to Longview, Texas, and defendant was so engaged in the operation of said railroad and portion of same above referred to as such common carrier on, to wit, the 22d day of October, 1894, when the injury to plaintiff herein complained of occurred.

The plaintiff having a few days before started from Scottsville, Kansas, for Houston, Texas, with a car load of horses and cows, reached Texarkana, Texas, with the same in safety and in good condition, reasonable care having up to that time been exercised by the employees of the various railroads over which said car had been transported to that point. That at said point the car containing said horses and cows was taken in charge of by the defendant for the purpose of transporting same over defendant's said line of railroad from Texarkana to Longview, and that plaintiff in accordance with the custom theretofore pursued by him, it being the usual and customary manner under the circumstances, continued to remain with said horses and cows in the car occupied by them while the same was being transported from Texarkana to Longview, with the knowledge and consent of defendant.

That the engineer and employees of defendant, who were operating said train of which said car formed a part, failed to exercise reasonable care and diligence in the handling of said train after it left Texarkana, Texas, and did on many occasions before the same reached Longview, subject the cars in which the plaintiff was riding with said horses and cows as aforesaid to jerks and jolts and shocks and of great and unnecessary violence, whereby said stock in plaintiff's charge were repeatedly thrown from their feet upon the
 5 floor of the car in which they were being transported. And defendant's said employees did persist in such reckless and unnecessary violence in the operation of said train notwithstanding that they were aware of plaintiff being in said car with said horses and cows, and notwithstanding his repeated protest against such

unnecessary violence on the part of said employees, and notwithstanding his repeated requests to them to exercise greater care; that on one occasion, and just before said train reached Longview, the car in which plaintiff was riding as aforesaid, was so violently jerked as to cause all or nearly all of said horses and cows in said car to be thrown from their feet upon the floor of same, and that while plaintiff was engaged in trying to get them upon their feet again, said car was subjected to another jolt and jar of extraordinary severity, and of a far more violent character than any which had preceded it, the same having been caused by the engineer in charge of said train starting or stopping or moving the same or a portion of same with unnecessary abruptness and violence; that when last-mentioned jolt occurred plaintiff was standing with his feet securely braced for the purpose of guarding against any sudden movement of the car, but that the jolt last referred to was one of extraordinary severity, and when it occurred plaintiff grasped an iron bar or hand hold fastened to the car, and was swung around upon the same with such force and violence as to tear his right arm from its socket, and to dislocate the same, and to inflict upon him bodily injuries otherwise of a most serious and permanent character, notwithstanding the precaution taken by plaintiff to prevent his being thrown from his feet, whereby he was injured in person as aforesaid, without fault or negligence on his part, but through and on account of the negligence and carelessness of the defendant company, its agents and employees as aforesaid.

And plaintiff alleges that when said accident occurred he was riding in said car on a drover's pass with the knowledge, acquiescence and consent of defendant as aforesaid, and for which defendant had received a valuable consideration.

The plaintiff's arm has been almost entirely rendered useless by reason of said accident, and plaintiff's capacity to earn a living has been greatly impaired on account thereof, and that he has been subjected to great physical pain and suffering and mental anguish on account thereof, to his damage in the sum of ten thousand dollars.

The premises considered, plaintiff prays that the defendant be cited as the law provides, to answer this petition, and that on final hearing he have and recover of the defendant judgment in the said sum of ten thousand dollars, and costs of suit and all other relief, both general and special, to which he may be entitled, and plaintiff will ever pray, etc.

EWING & RING,
Attorneys for Plaintiff.

Original petition.
Filed January 28th, 1895.

L. B. WEBSTER, *Clerk.*

In the District Court of Marion County, Texas, Fifth Judicial District.

ALEXANDER REEDER
vs.
TEXAS & PACIFIC RAILWAY CO. }

Petition for Removal.

The petition of the Texas and Pacific Railway Company respectfully shows to the court :

First. That the Texas and Pacific Railway Company was, and is, a corporation, duly organized and existing under and by virtue of the laws of the United States, to wit: "An act to incorporate the Texas and Pacific Railway Company, and to aid in the construction of its road, and for other purposes," approved March 3d, 1871, and
7 acts amendatory thereof and supplemental thereto, including an act approved May 2d, 1872, whereby, among other things, the name, style and title of said Texas and Pacific Railroad Company was changed to "the Texas and Pacific Railway Company."

Second. That the above-entitled action was commenced in the above-named court on the 28th day of January, 1895, and citation issuing therein was served upon the defendant on the 29th day of May, 1895, which said citation is returnable on the second Monday in June, 1895, it being the 10th day of June, and this defendant is not, and will not be required, by the laws of the State of Texas, or the rule of this court, to answer or plead to the petition of the plaintiff before the 11th day of June, 1895.

Third. That the matter in dispute in this case exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and this suit arises under the laws of the United States, as hereinbefore and hereinafter more fully set forth; that this action was brought by the plaintiff for \$10,000.00 damages for personal injuries, alleging that on the 22d day of October, 1894, he was traveling with stock from Scottsville, Kansas, to Houston, Texas, and that between Texarkana and Longview he was injured by the rough handling of plaintiff's cars, and had his arm wrenched from its socket; with prayer for judgment, as appears from plaintiff's petition, which is referred to for a more particular statement of the cause of action; that this suit against this defendant is a suit arising under the laws of the United States, and more specially under the laws of the United States, constituting the charter of this defendant, and under which it was incorporated, that is to say, the said act of Congress of the United States, approved March 3d, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," and acts amendatory thereof and supplemental thereto, approved respectively on
May 2d, 1872, March 3d, 1873, and June 22d, 1874.

8 Fourth. That the above-entitled action is a civil suit, arising under the laws of the United States, of which the circuit court

of the United States for the eastern district of Texas is given original jurisdiction by act of Congress, approved March 3d, 1887, to wit: an act entitled "An act to amend the act of Congress, approved March 3d, 1875, entitled, 'An act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes,'" and the acts of Congress, approved August 13th, 1888, entitled, "An act to correct the enrollment of an act approved March 3d, 1887, entitled, An act to amend sections 1, 2, 3 and 10 of an act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the States courts, and for other purposes;" approved March 3d, 1875.

Your petitioner herewith presents and files a good and sufficient bond, conditioned that it will enter and file in the circuit court of the United States for the eastern district of Texas, on the first day of its next session, a copy of the record in this action, and for paying all costs that may be awarded by said circuit court, if said court shall hold that said suit is wrongfully or improperly removed thereto, and to enter special bail in said suit if special bail was originally requisite therein.

Your petitioner therefore prays the said court to accept said petition and bond, and to remove this cause to the circuit court of the United States for the eastern district of Texas, and for such other relief in the premises as may be just and equitable.

THE TEXAS & PACIFIC RAIL-
WAY COMPANY,
By W. T. ARMISTEAD, *Attorney.*

Filed June 10th, 1895.

L. B. WEBSTER, *Clerk.*

STATE OF TEXAS,)
County of Marion.)

9 W. T. Armistead, being duly sworn, says that he is the agent of the Texas and Pacific Railway Company, being the attorney of said company; that the said Texas and Pacific Railway Company is a corporation organized under and by virtue of the laws of the United States; that he has read the foregoing petition and knows the contents thereof; that the facts stated therein are true.

W. T. ARMISTEAD.

Sworn to and subscribed before me, this 10th day of June, 1895.

L. B. WEBSTER,
District Clerk.

Petition for removal.
Filed June 10th, 1895.

L. B. WEBSTER, *Clerk.*

In the District Court of Marion County, Texas, Fifth Judicial District.

ALEXANDER REEDER
vs.
TEXAS & PACIFIC R'Y Co. }

Know all men by these presents: That the Texas and Pacific Railway Company as principal, and ——— and ——— as sureties, are held and firmly bound unto Alexander Reeder, in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made, unto the said Alexander Reeder, his heirs and assigns, we jointly and severally bind ourselves, our successors, representatives, heirs and assigns, firmly by these presents, yet upon these conditions, that—

Whereas, the said The Texas and Pacific Railway Company has filed its petition in the district court of Marion county, for the removal of a certain cause therein pending, wherein Alexander Reeder is plaintiff and The Texas and Pacific Railway Company is defendant, said cause being numbered upon the docket of said court as No. 6335, to the circuit court of the United States for the eastern district of Texas.

10 Now, therefore, if the said The Texas — Pacific Railway Company shall enter in said circuit court of the United States for the eastern district of Texas, a copy of the record in said suit on the first day of the next session thereof, and shall pay all costs which may be awarded by said circuit court of the United States, if said court shall hold that — suit was wrongfully or improperly removed thereto, and shall there appear and enter special bail in said suit, if the same was originally requisite in said cause, then this obligation shall be void; otherwise of full force and effect.

Witness our hand- and seal- this 10th day of June, 1895.

THE TEXAS AND PACIFIC RAILWAY
COMPANY,

By W. T. ARMISTEAD, *Its Attorney.*

J. D. CRAWFORD.

JNO. A. FIELDER.

S. A. SPELLINGS.

Approved this 11th day of June, 1895.

JOHN L. SHEPPARD,
Judge Fifth Judicial District.

Bond for removal.

Filed June 11th, 1895.

L. B. WEBSTER, *Clerk.*

ALEXANDER REEDER
vs.
TEXAS & PACIFIC RAILWAY Co. } No. 6335.

This cause coming on this day to be heard, upon the petition of the Texas & Pacific Railway Company, to remove same to the circuit court of the United States for the eastern district of Texas, said

petition being heard by the court, and it appearing to the court that a good and sufficient bond has been filed, and that petition shows proper grounds for removal, the prayer of the said The
 11 Texas & Pacific Railway Company, is granted and approved, and this cause ordered removed to the circuit court of the United States for the eastern district of Texas and the clerk of this court will make out a transcript of the record in this cause, to be filed in the United States court for the eastern district of Texas.

Order of removal.

Filed June 10th, 1895.

L. B. WEBSTER, *Clerk*.

In the U. S. Circuit Court, Eastern District of Texas, at Jefferson.

ALEXANDER REEDER	} No. 435.
vs.	
TEXAS & PACIFIC RAILWAY CO.	

Now comes The Texas and Pacific Railway Company, defendant, and by leave of the court amends its answer filed September 23, 1895, and demurs to the plaintiff's petition, and says the same is insufficient in law and prays judgment, etc.

And specially excepting thereto, defendant says said petition alleges that the defendant was incorporated under the laws of Texas when in truth and fact the court judiciously knows that the defendant was incorporated under the laws of the United States of America, and set forth in petition for removal.

W. T. ARMISTEAD,
Attorney for Defendant Co.

And for answer the said defendant company denies all and singular the allegations in the plaintiff's petition contained and says it is not guilty of the wrongs, injuries and trespasses charged against it and puts itself upon the country.

1. And specially answering herein, said defendant says, that the plaintiff was injured by his own acts, omissions and negligence in riding in the stock car instead of in the caboose provided for such mode of transportation, as plaintiff was entitled to, and that by trying to lift up some of his stock which was down in the stock car, and while in the effort to lift said stock or animals, and the train being in rapid motion, and that he was injured by other stock being jostled and thrown against him in the car, and that all the acts aforesaid *was* negligence on his part, which contributed to and caused his injury.

2. And said defendant company, further answering herein, says that the alleged injury of which the plaintiff complains was one of his assumed risks incident to the nature of his contract, and the mode of his transportation, and that by the verbal rules and regulations and customs of defendant company, the plaintiff with "his drovers' pass," was entitled to and required to ride in the caboose which was provided for him, and that he was advised and notified

by the operatives and conductor of said train of the rules and regulations aforesaid, and that said plaintiff refused to ride in said caboose and got in the stock car with his stock and goods of his own choice and volition, and over the protest of the defendant, and that the stock car in which he was riding when hurt was more dangerous to ride in than the caboose, which was immediately behind and next to said stock car, and that if the said defendant had rode in the caboose, instead of the stock car, he would not have been hurt.

Wherefore, defendant says plaintiff cannot recover, because of his contributory negligence, and of the risk he assumed in riding in the stock car for his own convenience, instead of in the caboose, which was a less perilous position, and the said defendant prays for judgment, costs, etc., and for general relief.

W. T. ARMISTEAD,

Att'y for Defendant, Texas & Pacific Railway Co.

Endorsed: C. L. No. 435. Alexander Reeder *vs.* The Texas & Pacific Railway Company. First amended answer of the defendant. Filed January 27th, 1896. C. Dart, clerk, by W. E. Singleton, deputy.

In the U. S. Circuit Court, Eastern District of Texas.

ALEXANDER REEDER

vs.

TEXAS AND PACIFIC RAILWAY CO. }

Now comes the plaintiff, and by leave of the court, first had and obtained, and files this, his first supplemental petition, in reply to the matter and things set up in the defendant's answer; and demurring to the said answer, says the same is wholly insufficient in law, and of this prays judgment.

An-especially excepting to the said answer, the said plaintiff says the same is insufficient.

1. In that part thereof wherein the defendant attempts to charge the plaintiff with a violation of the rules and regulations of the defendant company by riding in a car with the cattle, horses and household goods of the plaintiff, and that in riding in another car than the regular caboose attached to the train, that the plaintiff was violating the said rules and regulations of the said defendant company; because it does not appear from the said averment in said answer, how or when said rules were made, or established, or whether the same are or were, written, printed, or posted, so as to give to the public notice of the existence thereof; and because the said rules and regulations are not sufficiently pleaded and specified in said answer.

2. And in that part of said answer wherein the said defendant seeks to avoid liability for the injury sustained by the plaintiff, on the ground that the said plaintiff was injured while in a common box car, instead of being in the regular caboose attached to the train,

14 and in consequence of the said plaintiff riding in said car of his own volition in violation of the rules and regulations of the said defendant company; because it is made to appear from the other averments in the said answer that the conductor and other employes of the defendant company knew of the fact that the plaintiff was so riding in said car, and that said employes in charge of said train permitted plaintiff to so ride in said car, and acquiesced in his so doing.

3. All that part of said answer which seeks to avoid liability on the part of the defendant, on the ground that the plaintiff assumed the risk incident to his transportation, in the manner in which he was traveling; because plaintiff cannot be held to have assumed the risk incident to the negligence of the defendant company; and there is no denial of the fact that plaintiff was a passenger on the defendant train at the time of his injury complained of, all of which the defendant prays judgment of the court.

And for reply, and answer to the several matters set up in said answer, the plaintiff denies all and singular the said averments, and says he was not guilty of contributory negligence, or that he violated any rule or regulation of defendant company in traveling in the car in which *was* his said stock and household goods known to him, or of which he had any notice whatever; and denies all and singular, each and all of the several allegations therein, in said answer contained, except so far as they are corroborated by the facts stated in his original petition filed herein.

EWING & RING,
L. S. SCHLUTER,
Attorneys for Plaintiff.

Endorsed: Alexander Reeder vs. The Texas and Pacific Railway Company. Plaintiff's first supplemental petition. Filed January 28, 1895. C. Dart, clerk, by W. E. Singleton, deputy.

15	ALEXANDER REEDER <i>vs.</i> TEXAS & PACIFIC RAILWAY CO.	}	435.
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TUESDAY, *February 4, 1896.*

This cause being this day called for trial, came both the plaintiff and defendant and announced ready for trial. Thereupon came a jury of good and lawful men, to wit: J. D. Kitchen and eleven others, duly empaneled and sworn, who after hearing the evidence, argument of counsel and receiving the charge of the court, retired to consider of their verdict, and afterwards on the same day returned into open court the following verdict, to wit:

"We the jury find for the plaintiff and assess the damage at fifteen hundred dollars (\$1,500.00); this the 4th day of February, 1896.

J. D. KITCHEN, *Foreman.*"

It is therefore ordered, adjudged and decreed by the court that the plaintiff, Alexander Reeder, do have and recover of, and from the defendant, Texas and Pacific Railway Company, the full sum of fifteen hundred dollars, together with all costs in this behalf incurred and expended, for all of which execution may issue.

It is further ordered that execution may issue against each party for all costs by them respectively incurred.

In the United States Circuit Court, Eastern District of Texas, at Jefferson.

ALEXANDER REEDER	}	No. 435.
vs.		
THE TEXAS & PACIFIC R'Y Co.		

Statement of Facts.

Be it remembered, that upon the trial of the above entitled and numbered cause, the following are the facts, and all the facts introduced in evidence:

Plaintiff offered in evidence the deposition of the plaintiff, Alexander Reeder.

16 Defendant objected on the ground that the witness is present in the court-room.

Objection overruled. Defendant excepted.

ALEXANDER REEDER, plaintiff, testified (by deposition taken February 21, 1895,) as follows:

My age is 70 years, residence Beloit, Mitchell Co., Kansas; I have no occupation at present. I left Scottsville, Kansas, at about 5 p. m. on October 22, 1894, on the train bound for Texas, and was riding in a car with three horses, two mules and five cows, and a lot of household goods; the car was a common box car, and reached a point near Longview, Texas, on the afternoon of October 25, 1894; I was riding in said car to look after the stock. I came down in the vicinity of Longview, Texas, about four or five o'clock p. m. on Thursday, October 25, 1894, and my destination was Houston, Texas. I had a pass which allowed me to ride in the car with the stock; I obtained the pass from the railroad agent at Scottsville, and was authorized to ride to Houston, Texas, and I rode in said car from four or five o'clock p. m. Monday evening, October 22, 1894, until four or five o'clock p. m. Thursday afternoon, October 25th, when I got to a point near Longview, Texas; I came through Kansas City, Mo., and through Little Rock, Ark., and through Texarkana; I did not leave the car, and cannot say when I arrived at the different points. I came down from Texarkana to Longview, and don't remember the names of the towns in Texas on the route, and had no time-card, and did not leave the car. When I got to Texarkana, everything in and about the stock was all right, and there had been no rough usage of them, and all was in good condition. At Texarkana the car was transferred to the Texas

and Pacific railroad; I was delayed about two hours in Texarkana, and then left for Longview, Texas. I don't remember the time I left for Longview, but I got into Longview about 5 o'clock p. m. October 25th, and was in the car with the stock from the time I left Texarkana until I reached Longview. I rode in the car to look after the stock, and to feed and water them, and see that none of them got down in the cars so that they could not get up or get hurt by others trampling on them while down; I have traveled with stock before, and found it best to ride in the car with them, for the reason above given, and so as to know where the car was all the time; one riding in the caboose could not readily locate a car of stock when the train was broken up and the car switched about in the yard at different places, and to remain in the car was therefore best for the stock; and the employees of the railroad who had control of the train knew that I was in the car with the stock; no one objected; I have several times travelled with stock in the same manner before, and it is usual and customary in going a long distance with stock and household goods in same car for a person accompanying them, to ride in the car with them as I did, and it was, and is, no unusual practice; they ride in the car to look after the stock, as I have above stated I did. After leaving Texarkana the road was very rough, and the cattle and horses were thrown down at least eight times by the sudden jerks made by the engine, and I called the brakeman on two or three different occasions, and told him to tell the engineer to use more care, that he was killing my stock; I could not see the conductor, but did so request the brakeman. I was injured a short distance from Longview, at about 5 o'clock p. m. on the 25th day of October, 1894; there is a steep grade near Longview, and the train stalled, and the engineer, in trying to get headway, would back the train a short distance, and then start up with a terrible jerk as he took up the slack of the train; my car was next to the caboose and received the full force of the jerk, and threw several of my cows down and the horses on top of them; the jar broke the halters that held horses; I saw they were being killed by the repeated jerks, and I climbed in the trough (I was afraid to get in where they were in any other way) and held on to the side of the car; while in that position they uncoupled the train and took a part of it up the grade, leaving my car stationary for a time; I then managed to get the stock all up, and was still holding on to the side of the car and up in the feed-trough, when the engine came back against the train, without my knowing that it was coming, with such force as to throw me out of the trough, but I held on to the side of the car, knowing that if I got under my stock I would be killed; the car jerked my arm out of place in the shoulder-joint; soon afterwards I called the conductor and he came to my assistance and helped me to get out of the position I was in, and I found my arm was pulled out of the socket at the shoulder; when we got up into Longview the conductor and brakeman, before helping me out of the car, pulled on my arm with all their might, trying to pull it back into place, and they could not; they then helped me out of

the car and took me to a doctor's office; the doctor was out; the doctor who had been sent for came and he tried to get the arm back into the socket, and called in help; they all failed to get it back, and they helped me back into the car and put me onto my cot and fixed it so I would not fall out; the doctor gave me three large doses of morphine; I took one dose then, and according to his instruction, took the second in about two hours; I did not take the third; I then went to sleep and did not wake up again for about six hours, and remained on the cot until I got to Houston; we got to Houston about 11 o'clock Saturday night, and they did not tell me, but sidetracked the car, and I remained there until Sunday morning unable to get out of the car alone. The engine came back against the car with great force, and then plunged forward, taking up the slack, and jerked the car I was in with such force as to hurt me as already stated; I was up in the feed-trough and was just going to get down when the jerk came, and was entirely unexpected to me; the jolt was worst I had experienced, and many others after leaving Texarkana were severe enough to throw the stock off their feet and keep me busy in getting them up. The stock had been thrown

19 down by previous jerks in trying to get up the grade, and I had just gotten them on their feet again when I was hurt; the halters of the horses were broken and the horses were thrown on the cattle, and unless they were all gotten up and in place they would be killed or greatly injured; I was holding on to some iron on the side of the car, and the great jerk pulled my right arm out of socket. The car stopped again a short distance from where I got hurt and I called the conductor; he came and I told him what had happened, and he took my name and age and where I was from and where I was going; he then said that maybe he and the brakeman could pull the arm back in place; they tried and failed; the train pulled up again and the conductor said to me, "If you can walk I will help you to see a doctor about two hundred yards off." I told him I thought that I could walk it if they would help me down to the ground. When we got to the doctor's office he had gone to supper, and the conductor went after him and brought him; the conductor told me they were to stop in Longview about one hour; after getting through with his efforts to put my shoulder in place the doctor gave me the morphine, as before stated; I was put back in my car, where I remained alone and without light, as I could not light my lantern until I got to Houston, between 10 and 11 o'clock Saturday night; during Friday I several times spoke to brakemen and asked to tell the engineer to be careful and not jerk. About daylight, Sunday morning, an old man came along and I got him to help me out of the car; the old man was a stranger, and not in the service of the railroad; I then hunted the yardmaster and asked him to put my car to the stock yards, as my stock was in a bad condition, and he said I would have to take my turn, that they were too busy, and it would be about 9 o'clock before they could be unloaded; I then asked him if he could tell me where I could find a telephone, so that I could telephone my son-in-law, Mr. Culp, and I handed him my son-in-law's card, and

he replied: "Go away and quit bothering me, and wait until your
 20 turn comes;" I then walked about until I met a colored
 man, and he showed me a telephone and I telephoned my
 son(-in law), and he came to me; he sent me to his father's,
 and he looked after the stock and sent a doctor to me; I don't
 know who the doctor was; when I arrived in Houston I was badly
 used up; my shoulder was swollen very much, and I could scarcely
 walk from the jolting I had received, and was very sore and had to
 move around very slowly and with considerable pain. I carried
 my arm in a sling and rubbed my shoulder with liniment, and I
 had no use of that arm from the time of the hurt until the present
 time, and cannot get the hand up to my head now, and have been
 unable to lie on that side at all when in bed, and cannot turn on
 that side; I have suffered greatly, and still suffer continually, but
 more at night when lying down than in the daytime now; I am at
 present not able to do anything; before said injury occurred I was
 in fine health; I never had been sick in my life to amount to any-
 thing, and was capable of doing almost any kind of work, or I would
 not have been traveling in charge of a car of cattle that distance;
 the shoulder is not like it was before the accident, and I think it
 is still out of place and has become permanently disabled; I think it
 will continue to be useless to me, and painful; I don't think it can
 now be remedied; it is drooped, and on the inside I think I can feel
 the end of the arm bone.

In answer to cross-interrogatories said witness testified:

I did not examine the ticket at all, but I think it was part of my
 bill of lading; I procured it at Scottsville, Kansas; I gave it to my
 son-in-law, Mr. Culp, when I got to Houston, and I don't know
 what he did with it, nor where it now is. I did not call for any
 doctor; the conductor offered to get one, and did, as I stated in my
 direct answers; I don't know who he was; he tried to pull my arm
 in place, failed, and then gave me three large doses of morphine to
 take as directed. I cannot say how long I staid in Longview; I left
 with my car, as I was in my car and had nowhere else to go.

21 I think it was three times during the day of October 25th
 that I spoke to brakemen and complained of the rough hand-
 ling of the train, and asked that the engineer be requested to be
 more careful; I cannot say on what part of the road I made that
 request, but it was intervals during that day.

Dr. T. H. STALLCUP, a witness for the plaintiff, testified as follows:

I am practicing medicine, and have been so engaged about 20
 years; I met the plaintiff, Mr. Reeder; I have examined him, and
 I find his arm dislocated and the shoulder-joint with an atrophy of
 the muscle, the muscles have all perished away, with some paral-
 ysis, partial paralysis; that arm in that condition is not of much
 service to him; he has no strength in it; I would consider it a per-
 manent injury; I don't know how long it has been done, but after
 a certain length of time elapses those injuries become permanent;
 the dislocation has never been put back in joint, or in the socket;
 I think his appearance as to physical strength and health, inde-

pendent of that arm, is good for a man of his age, and is rather extra; I think the time given by authorities on surgery in which injuries of this kind may be reduced, is from thirty to ninety days; in some cases like this, the nerve feed the muscles, and when that nerve is severed or cut, when the dislocation is reduced, it does not regain its natural strength, on account of the nerve being separated; the paralysis is not overcome by putting the arm back into position after a certain lapse of time; I have heard how the plaintiff says he got hurt; and I think that sort of accident would be likely to produce the injury that I find him suffering from.

On cross-examination said witness testified:

Under certain circumstances it would occasion much trouble to put that arm back in its proper place directly after the accident; some of them can be put back very readily, and some of them cannot; this one ought to have been put back right away as soon as possible, the sooner the better; sometimes the dislocation of an arm is such that it cannot be replaced, but I think they could be under certain circumstances; all of them could be replaced, but some of them are not willing to undergo the torture, and some people object to being put under the influence of chloroform, and he might have been one of that class of patients; there are certain conditions where, if those ligaments were ruptured, and even if it was reduced, it would not overcome the trouble; it might be replaced in the socket and still have the severing of the muscles, even where the man would have the use of the arm below the elbow; I mean, when the shoulder gets stiff, there would have to be a certain amount of injury to the muscles and ligaments for the shoulder to get stiff; they are very rare, in my practice, because I don't have much to do with railroad injuries; I could not say that in case of a man, such as this one, holding to a pin in the car, that a sudden jerk or jar would cause his hand to give away before it would jerk his shoulder out of joint, because some men are very stout; I could not say what the general rule would be about that; I don't think that it is more probable that the hand would give away before it jerked the arm out of joint; I can very easily see how a sudden jar in a certain direction would cause dislocation of the shoulder-joint; it seems to me that if a man 70 years old would submit to take chloroform, that his arm could be replaced, and if it was replaced at that age, it would not be of such service to him as if he were younger, and the injury to the joint and the rupture of the ligaments would not unite so readily, and from the separation of the nerve that support the muscles there, there might be some paralysis. I made this examination of the plaintiff one day last week in my office, with a view of testifying in this case; I don't think the plaintiff has any use of that arm now; he cannot raise it up, and he has no grip in his hand, the same dislocation exists now; the ligaments may have held but are not — proper position; I did not discover any tenderness or soreness there, but I did not examine it as to that, but it is all out of position, and the shoulder drops down; I think that it is healed now, and that there is no tenderness; the ligaments would never get into

position until the bones was back in its proper place; the ligaments bears a certain relation to the bone, and the bone being out of position, the ligaments are out of position.

On redirect examination said witness testified:

These dislocations can be more easily reduced at first than at any other time; there are cases in which they may be reduced, but do not benefit the patient; I have seen disabled shoulders where there was never any dislocation; when the delatoid muscles are perished away, that is an evidence that the nerves are cut off, and the effect of that is that the arm is paralyzed.

Dr. GEORGE A. McDOWELL, witness for plaintiff, testified (by deposition, taken March 7, 1895), as follows:

I reside in Houston, Harris county, Texas; am a practicing physician and surgeon, 35 years actively engaged in practice; am in practice at the present time; have been 28 years in practice in Houston. I examined Alexander Reeder especially with respect to his right arm and shoulder and found there was loss of soundness of said shoulder, change in direction of axis of the humerus, or arm bone; also loss of voluntary motion of arm, and a resistance to movement in certain directions, and a marked prominence of acromian process, also flattening of deltoid muscle, also arm directed away from side of body, with pain from pressure of bone on the brachial plexus of nerve, particularly the circumflex, which may be so injured that the deltoid muscle can never regain its functions. The arm cannot be lifted up nor brought down to the side to its normal position in its present condition, and is so impaired that it

24 is a stiff and comparatively useless member, being a dislocated shoulder. A fall upon the shoulder, elbow or hand, violent muscular action, may so wrench the arm and muscle as to cause dislocation of the shoulder. The limit of time for reduction of a dislocated shoulder of this variety was fixed by Cooper, first at three months, and the operation after the length of time was considered grave, there being danger of rupture of blood-vessels or of inflammation; therefore, it is not considered wise or prudent to attempt the reduction of such cases after three months, unless the dislocation is a source of constant misery or is really likely to be useful after reduction, neither of which obtains in this case, and therefore the injury is, from a surgical standpoint, permanent.

In answer to cross-interrogatories said witness testified:

I first saw Alexander Reeder, on or about the 28th day of February, 1895, about four months after the occurrence of accident; I simply examined his shoulder. It is true that the sooner a dislocation is treated after the injury, the better it is for the injured party.

ALEXANDER REEDER, plaintiff, a witness on his own behalf, testified as follows:

I am the plaintiff in this suit, and live in Beloit, Mitchell county, Kansas; at the time I was injured, and before, I did not do a great deal of anything, but farmed a little and raised a few horses, etc.,

to make a living; I used to be a blacksmith; in travelling from Texarkana to Longview I was injured in my right arm; I was in the stock car at Texarkana; I had in that car five head of cows, two mules and three head of horses, and some household goods. The brakeman on the train saw me in that car several times; it is about four hundred or five hundred miles from where I started in Kansas to Texarkana; no injury resulted to me or the cattle before I reached Texarkana, and myself and cattle were all right when we

got to Texarkana; the train was handled pretty rough all
 25 the way from Texarkana to Longview; it jerked back and forth and knocked my cattle and horses down, and the road seemed to be very rough; I spoke to the brakeman about it, and told him I would like, if he could, not to jerk so hard, as they were killing the stock; the reason I rode in the car was that I had to take care of the stock and feed the cattle and horses, and take care of the household goods, and one or two of the cows I had to milk every morning; I was injured near Longview but I don't know how close it was to town. I told the conductor and brakemen about the injury at the time, and how it happened; I believe I put in a claim to the railroad company for this injury; I was down at Houston at that time; the bill of lading that I had went along with the claim, and my pass; the pass was on the bill of lading, if I remember right; I gave that pass to my son-in-law in Houston; I believe I sent in my claim to this company when I sent it in. I did not have a claim against any other company; I have not seen that pass or bill of lading since that time; I got my son-in-law to write, as I could not write myself, and he put it in the letter and sent it to them; just before I was injured, the jar had knocked three cows down, and two of the horses fell on top of them, and when the car stopped I got down in front to get them up again, and after I got them up I was going back to take the seat again, and when I got about a foot from the end a jar came and knocked me off my feet, and I grabbed hold of some iron, and that swung me back this way until they got started all right, and after they got started on the run, and then I got down and got on my seat again; as soon as they stopped again I called to the conductor and brakeman; my horses were tied in the car; the jar broke two of them loose, and two of the cows loose; at the time I was injured I was in the trough, and did not get down among the cattle and horses. It is pretty hard to tell how much money I have been earning a year, as I never kept much account of it, but I suppose that I made two hundred or two hundred and fifty dollars

26 a year—enough to keep me; I cannot do any work now; I still suffer pain from that injury, but more so at night; but for about four months after the injury I could not lie on that side; I do not know the physician they carried me to at Longview; the physician there did not make any effort to put my arm in place; he stripped me off and examined me, and tied my arm in place; that was the physician at Houston; the physician at Longview stripped me off and laid me on the bed and caught hold of my arm and pulled it and twisted it; he did not have anybody to help him the first time, and I told him to get somebody to help him, and a young

man there helped him, and I don't know how long they worked, but they gave it up, and I told him I would like to get it fixed, and then he got at it again; he gave me a big dose of something, and waited a little while to see if that took effect on me, and I did not feel it, and then he got this young man again, and they could not fix it, and he says, "Your arm is badly torn off." That is the expression he used. The company sent a physician to me after I got to Houston. He came in and stripped me and tried to straighten it, and he said it would be all right if I carried it in a sling awhile; I carried it that way for about four months, but it did not help me; my health has been very good all my life.

On cross-examination said witness testified:

I had a cot tied up to the rafters of the stock car, one of these spring wire cots, with a mattress on it; I had a good seat in the corner of the car, and I sat on it when I wanted to; I was up in the trough when I got hurt; the trough was right alongside of the car, where I fed the horses and cattle; the trough was just across the car from the cot; the cot was swinging in the car fastened up with wires; the trough was about two or three feet from the cot; I think the trough was about three feet from the bottom of the car, but I don't know exactly; when I got hurt, I suppose my right side was next to the car; I grabbed the iron with my right hand, and had
 27 a stick in my left to punch the stock up with; I think it was between five and six o'clock when I got hurt, as they were just beginning to light up; I don't know how far it was from Longview; I think the doctor at Longview worked on me fully a half or three-quarters of an hour; he gave me three doses of morphine, but I don't know how much there was in a dose; I only took one of them, and then he said after I got in the car if my shoulders still hurt me I had better take another one, and I did so in about an hour; I got to Houston some time Saturday night, and did not see the doctor till Sunday morning about eight or nine o'clock; I think it was the 25th when I got to Houston; I got into Houston Saturday night some time, but they left me standing on the track till Sunday morning; that was the International and Great Northern railroad; I don't think the doctor in Houston was with me over twenty minutes; he did not try to put my arm back in its place; he said there was too much swelling, and he could not do anything then, and he said he thought it was in place all right; I did not think that he knew what he was talking about; I can raise my arm from the elbow down, but I cannot raise it any further than that; I cannot raise my arm straight out, but only as far as the elbow will go; sometimes my fingers on that hand get stiff, and I have to push them back. I am 71 years old; I was raised in Pennsylvania, and have been in Kansas since 1872. The doctor in Houston said he would come back, but he did not come; I had no other physician there; the reason that I did not send for another doctor is because I thought that maybe, by tying it up as he said, it would get better.

On recross-examination said witness testified:

My bill of lading was sent off to a man that I believe they call the claim agent of the Texas and Pacific railroad.

On recross-examination said witness testified:

28 I saw the bill of lading mailed; we did not send it right away, but it was a week or two before we sent it; we sent it to the Texas and Pacific railroad, and not to the I. & G. N.; that is what they told me; I did not know the names of the railroads, but that is what they told me; the claim is for the injury to myself and not to the cattle.

Plaintiff rested.

C. W. GOSSETT, a witness for the defendant, testified as follows:

I am a conductor on the Texas and Pacific railroad and held that position on the 25th and 26th of October, 1894; I recollect seeing plaintiff before now; I saw him on the 25th and 26th of October, 1894; at that time he was with an emigrant outfit on my train from Texarkana to Longview Junction; at Texarkana I looked at his pass, and I did not see him any more until we got to Queen City tank; we stopped there, and I asked him to come back to the caboose; that it would be a nicer place for him to ride, and in case of accident it would be safer, and he said that it was inconvenient for him to get in and out of the car to attend to his stock, and he would rather ride in the car with his stock; it is customary on the Texas and Pacific railroad for stockmen to ride in the caboose, but sometimes when they have an outfit like this they do ride in their cars; I told him it would be safer for him to ride in the caboose; his car was the second car from the caboose; it was put there to make it convenient for him to ride in the caboose and attend to his stock, and that is where it is customary to put such cars; the caboose is a safer place to ride than in a stock car; if the plaintiff had been in the caboose that day he would not have been hurt; I saw him at Longview Junction on our arrival there; I saw him on top of the hill just as we were going down in there from the top of the car; there was no way for us to get into the car while the train was in motion; I got the word that he was hurt, and went and looked over the top of the car; the
29 first thing I did I got the regular form that we have to fill out and asked him the regular questions in regard to his age, and where he lived, and how the accident occurred; he made a verbal statement to me how the accident occurred, and I wrote it down; I cannot say that I reduced the statement to writing exactly as he made it to me; I sent the statement to the company; as near as I could recollect, his statement was that while trying to get a cow up, or one of his stock that was down while the train was in motion, that he fell, and his shoulder was misplaced or knocked out of joint; his cot was in one end of the car on top of his household goods, and, I think, it was strug up to the roof of the car; we got into Longview at 7.45 p. m.; I took the plaintiff to the drug store in Longview where the doctor's office is, and he was not there, and I sent for the doctor, and left him in care of the druggist; the brakeman and I tried to replace his arm while he was in the car, after our arrival at Longview Junction; he wanted us to do it; we were about a half mile from Longview Junction when the brakeman

notified me that there was something the matter with him. By the slack of the train is meant that when the train is going downhill, and the head end starts up, and the slack bunches it together; the slack is not a regular space, but varies from five to eight or nine inches between each car; in going downhill the cars run up together, and when it starts up they pull out again; we had twenty or twenty-one cars in that train, with the caboose.

On cross-examination said witness testified:

Dr. Stansbury was the doctor that I carried him to at Longview; I don't think he was the local surgeon of the company; we went to him because he was the nearest physician. We did not have to double any that day between Longview and Marshall; I remember that, because we never have a double between Marshall and Longview going west; I could not recollect whether we did any siding that day or not between Marshall and Longview, but we did not do any switching.

On redirect examination said witness testified:

There was nothing unusual as to the jerking of the train that day; it was the regular run; we made an average run, and the train was handled carefully, and just the usual jerks and jolts was all that we experienced.

O. P. CUBBERLY, a witness for the defendant, testified as follows: I reside at Longview, Texas; on or about October 25th and 26th, 1894, I was an engineer on the Texas and Pacific railroad; I remember the time Mr. Reeder was hurt on the train. There was nothing unusual about the run between Texarkana and Longview that day, that I know of; there was no rough handling of the cars; I did not know anything about the accident; there were about twenty cars in the train.

On cross-examination said witness testified:

We did not double that day between Marshall and Longview, but we did double about a mile east of Marshall; by doubling is meant to take half of a train over a hill, and then come back and get the other part; I don't remember everything that occurred that day, but I do remember about the doubling.

On redirect examination said witness testified:

With the train we had that day, the amount of slack I suppose would be from eight to twelve feet on the twenty cars.

J. H. KELPE, a witness for defendant, testified as follows:

I was a freight brakeman on the Texas and Pacific railroad about October 26, 1894; I did not see the accident to Mr. Reeder on that day, but I was the first man there after he was hurt, I suppose; he told me he was hurt; I was on top setting brakes at the time, and he was inside of the car; I went and got the conductor and we went and assisted him all we could, and tried to pull his arm in place; when I first saw Mr. Reeder that day, I asked him to come back in the caboose and ride, and he said he would sooner ride in his car with the stock, and I told him there was room in the caboose for him, and I saw him again at Queen

City and he gave me some apples that he had in the car, and then I saw him again at Marshall, where we were taking water, and I asked him how his cattle were, and he said they were in pretty good shape at Marshall, but they were in bad shape getting into Longview; when I saw him at Marshall it was after we had doubled, and he had not been hurt then. We made what we call, a good average run that day from Texarkana to Longview; we had no accident to the cars, and made it in the usual hours; it was an ordinary run, and not any rougher than usual. It has always been customary for a man with an emigrant outfit, to ride in the caboose, and when the train stops, to go out and look after their stock; in such cases the stock car is next to the caboose, unless we have oil tanks; that is the rules of the road; the caboose is a safer place to ride than a stock car, and the plaintiff would not have been hurt if he had been riding in the caboose; he told me he got hurt trying to get his cattle up.

On cross-examination said witness testified:

He told me he got hurt while trying to get his cattle up, and while the train was in motion. We doubled Marshall hill that day, on the east side of Marshall; that is the only place we doubled from Texarkana to Longview; the plaintiff would not have been hurt if he had been in the caboose, unless he got off while the train was in motion; I was in the caboose and did not get hurt; the reason the stock car is placed so near the caboose is for the convenience of the man to look after the stock: he could get in there to get the stock up while the train was in motion, and there is no ladder by the door: he would have to go in the car to get them up. We got to Longview that night about 7.30 or 7.40.

J. M. BUCHANAN, a witness for defendant, testified as follows:

About October 25, 1894, I was a freight brakeman on the Texas and Pacific railroad; I was on the train on which Mr. Reeder was hurt; that was an ordinary run that day, and there was no trouble anywhere; we doubled Marshall hill, is the only place that I remember; I never saw the plaintiff at all, as I was on the forward end of the train all the while.

On cross-examination said witness testified:

I did not see the plaintiff at all on that trip, and did not see him after he was hurt, at Longview; we doubled Marshall hill most every trip, and we had a heavy train that trip; I never was on a train that doubled a hill between Marshall and Longview; I have been on this part of the road three years; there are some side tracks between Marshall and Longview, but I don't remember whether we switched any between there on that trip; I cannot tell the jury everything that happened on that trip as it was just an ordinary trip.

ALEXANDER REEDER, recalled by defendant, testified as follows: I signed this contract for shipment.

Defendant offers said contract in evidence, which is as follows, to wit:

33

Duplicate.

The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company, and leased, operated, and independent lines.

Live-stock Contract.

Limiting the liability of carriers.

No. of car, 334; initial, H. C. A. & N.; No. of heads, 10; waybills series 1, No. 1.

Emigrant.

Live-stock contract, executed at Scottsville, Ks., station, 10, 22, 1894.

This agreement, made between the Missouri Pacific Railway Company, of the first part, and C. S. Culp of the second part, witnesseth, that for the considerations and the mutual covenants and conditions herein contained, the said first party will transport for the said second party the live stock described below, and the parties in charge thereof, as hereinafter provided, viz:

One car, said to contain ten head—5 cows, 3 horses, 2 mules, from Scottsville, Kansas station, to Houston, Texas station, consigned to C. W. Culp; 92 dollars for 2,000 pounds, at the rate of tariff per hundred pounds (released to \$100.00 per head on horses, \$10.00 per head on cows) said rate being less than the rate charged for shipments transported at carriers' risk, for which reduced rates and other considerations it is mutually agreed between the parties hereto as follows:

First. That the live stock covered by this contract is not to be transported within any specified time, nor delivered at destination at any particular hour, nor in season for any particular market.

Second. That the first party is exempted from liability for loss or damage arising from derailments, collision, fire, escapement from cars, heat, suffocation, overloading, crowding, maiming or other accident or causes not arising from negligence on the first party.

Third. That the second party shall assume all risk and expense of feeding, watering, bedding, and otherwise caring for the live stock covered by this contract while in cars, yards, pens, or elsewhere, and shall load and unload the same at his own expense and risk.

Fourth. That the first party is exempted from liability for loss or damage caused by any mob, strike or threatened or actual violence to person or property from any source.

Fifth. That, as a condition precedent to any damages, or any loss or injury to live stock covered by this contract, the second party will give notice in writing of the claim therefor to some general officer or to the nearest station agent of the first party, or to the agent at destination or some general officer of the delivering line, before such stock is removed from the point of shipment or from the place of destination, and before such stock is mingled with other stock, such written notification to be served within one day after the

delivery of the stock at destination, to the end that such claim may be fully and fairly investigated; and that a failure to fully comply with the provisions of this clause shall be a bar to the recovery of any and all such claims.

Sixth. That in case of total loss of any of the live stock covered by this contract, from any cause for which the first party will be liable payment will be made therefor on the basis of the actual cash value at the time and place of shipment, but in no case to exceed \$100 00 for each horse, pony, gelding, mare or stallion, mule or jack;
\$50.00 for each ox, bull or steer; \$30.00 for each cow; \$10
35 for each calf or hog; \$3.00 for each sheep or goat, and in case of injury or partial loss, the amount of damages claimed shall not exceed the same proportion.

Seventh. That this contract does not entitle the holder thereof, or any other person, to ride on any train except for the purposes and in accordance with the conditions printed on the back hereof, all of which are agreed to be a part of this contract; nor to ride in the cars of any train except that in which the live stock covered by this contract is transported, nor to return passage from — to — unless this contract is presented with- — days from the date hereof to the properly authorized agent of the first party for return pass.

Eighth. That such pass, properly obtained as above, shall be used within 24 hours after the date and hour issued, by such person or persons only whose names are written herein — and who actually accompanied the live stock for the purpose of caring therefor, and shall not include women, infants, or other persons unable to perform the services of caring for live stock in transit, as required by this contract; and persons entitled to return passage under the term of this contract shall perform the journey within — days from the date of return pass.

Ninth. That the person or persons in charge of live stock covered by this contract shall remain in the caboose car attached to the train while the same is in motion, and that whenever such person or persons shall leave the caboose, or pass over or along the cars or track, they shall do so at their own risk of personal injury from every cause whatever, and that the said first party shall not be required to stop or start its train or caboose cars from depots or platforms, or to furnish lights for the accommodation or safety of such persons.

Tenth. That the first party hereby releases and waives any
36 and all cause for action for damages that may have accrued to him by any written or verbal contract prior to the execution hereof.

Eleventh. That in case the live stock mentioned herein is to be transported over the road or roads of any other railroad company, the first party shall be released from liability of every kind after said live stock shall have left its road, the understanding of both parties hereto being that the party of the first part shall not be held or deemed liable for anything beyond the line of its road, excepting to protect the through rate of freight named herein.

Twelfth. That no person other than the owner of the stock shipped

or his duly authorized agent, in the name of the owner, shall be allowed to sign this contract.

Thirteenth. That no suit or action against the first party for the recovery of any claim by virtue of this contract shall be sustained in any court of law or equity, unless such suit or action be commenced within six months next after the cause of action shall occur; and should any suit of action be commenced against the first party after the expiration of six months, the lapse of time shall be constituted conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

Fourteenth. That in making this contract, the undersigned owner, or other agent of the owner, of the stock named herein, expressly acknowledges that he has had the option of making this shipment under the tariff rates, either at carrier's risk or upon a limited liability, and that he has selected the rate and liability named herein, and expressly accepts and agrees to all the stipulations and conditions herein named.

Fifteenth. That the evidence that the said second party, after fully understanding and accepting all the terms, covenants and conditions of this contract, included the printed rules and regulations on the back thereof, and that they all constitute a part hereof, fully assents to each and all of the same, is his signature hereto.

C. W. WILSON,
Agent for Mo. Pac. R'y Co.
C. S. CULP, Shipper.

Witness :
— — —

The Missouri Pacific R'y Co., St. Louis, Iron Mountain & Southern R'y Co., and leased and operated and independent lines.

SCOTTSVILLE, KAN., 10, 22, 1894.

Live-stock Contract.

We, the undersigned, persons in charge of the live stock mentioned in the within contract, in consideration of the free pass granted to us by the Missouri Pacific Railway Company, and of the other covenants and agreements contained in said contract, and those printed on the back hereof, all for which, for the considerations aforesaid, are hereby accepted by us and made a part of this our contract, and all the terms and conditions of which we hereby agree to observe and to be severally bound by, do hereby expressly agree that during the time we are in charge of said stock, and while we are on our return passage, we shall be deemed employes of said company, for the purposes in said contract stated, and that we do agree to assume, and do hereby assume, all risk incident to such employment, and that said company shall, in no case, be liable to us for any injury or damages sustained by us during such time for which it would not be liable to its regular employes.

A. REEDER.
— — —

Cars No. 334, H. C. A. & N.

Pass on freight trains only.

A. Reeder.

Parties in charge of accompanying stock.

C. M. WILSON, *Agent*.

NOTE.—Agents will make contract in duplicate, giving one to shipper, and return the other to the freight claim agent, St. Louis, Mo.

Notice.—This pass must be carefully filled out by the agent at destination, to whom the contract will be presented by the party entitled to return transportation.

Driver's Pass.

Issued by the Missouri Pacific Railway Company.

Good for continuous pass only.

Issued to ———, who — actually in charge of and accompanied to — car of live stock, shipped from — on the — day of —, 189—. Is not transferable, and must be presented to train conductor for continuous passage by those entitled to free passage under this contract, within twenty-four hours after the date and hour of issue.

As a means of identification, the agent issuing this pass will require each person to write his name in the spaces below, and will cancel the lines not required by drawing a pen through them.

If this pass is found in the hands of any other person other than the original holder of the stock contract, whose name is written above, it will then become the property of this company, and the conductor will take it up and collect full fare. — hereby agree to

all the conditions and provisions of this contract, and —
39 also agree to sign names and otherwise identify ourselves as the original holders whenever called upon by any agent or conductor of this railway company to do so.

Personal signature of the persons whose names are above written as entitled to free passage under this contract.

This pass must be written in ink, otherwise it will not be valid.

Date of issue, ———, 189—.

Hour of ——— m.

Witness: ———.

Ag't Mo. Pac. Railway Co.

Special Instructions to Conductors.

You will require all persons presenting these passes to write their names below and compare the writing with that of the signature above, in order to satisfy ourselves that the passes are being used by those parties only who are entitled to free passes under this contract.

W. B. DODRIDGE,
General Manager.

On cross-examination said witness testified :

I do not remember these gentlemen who have just testified, as the men who were in charge of the train the day I got hurt. I never tried to get my cattle up that day while the train was in motion, and I made no such statement to the brakemen or conductor;
40 I did not try to get them up while the train was in motion, because the trough was so narrow that I could hardly get along it, and I would wait till it stopped.

The plaintiff, Alexander Reeder, instituted this suit in the district court of Marion county, Texas, and the cause was duly and legally removed therefrom, to the U. S. circuit court for the eastern district of Texas, at Jefferson, by The Texas and Pacific Railway Company, defendant.

The court then charged the jury as follows :

Charge of the Court.

GENTLEMEN OF THE JURY: This is a suit by the plaintiff, Alexander Reeder, against the Texas and Pacific Railway Company, for damages for personal injuries received by him, on the defendant's railway, alleging that he was riding on a freight train on a drover's pass, and in the car with his cattle and goods, and that he was injured by the rough handling and jerking of the cars, etc., as set out in the petition which has been read to you.

The defendant answered, that the said plaintiff contributed to his own injury, and assumed the risk, by reason of his riding in the stock car with the animals instead of riding in the caboose, which it alleges was the safer place to ride in than the stock car, and that he would not have been hurt if he had rode in the caboose, and that he was requested by the operatives of the defendant company to ride in the caboose, etc., as set forth in the defendant's answer, which has been read to you. My view of this case, gentlemen, is not in accordance with the position assumed by the attorneys, either
41 for plaintiff or the defendant in this case, and I charge you, that there is but one theory of the law of this case, by which the plaintiff can recover, and that is as follows :

If you believe from the evidence, that the plaintiff, Alexander Reeder, was riding in the stock car in which his horses and cattle and goods were being transported over the defendant's road, and that while the train was stationary, his cattle being down, and needed his attention, he at the time, in a prudent and careful manner, attempted or did give the horses and cattle the attention or assistance which they needed, and that the plaintiff was injured at that time, by a sudden and unusual hard jerk or jolt or bumping of the cars in which he was riding, through and by the negligence of the defendant company or its operatives; you will find for the plaintiff, and assess actual damages as hereinafter instructed.

If, however, you believe from the evidence, that at the time the plaintiff was hurt, that the train upon which he was riding was in motion, at the time he was giving the horses and cattle the assist-

ance which they needed, the plaintiff would not be entitled to recover, and you will find for the defendant.

If you should find for the plaintiff, in estimating the damages, you will take into consideration the age of the plaintiff, his mental and physical suffering, and consider whether the injury is permanent in its character or only temporary; whether he is disabled for life or only partially; his diminished ability to labor or perform his avocation in life.

You are the judges of the credibility of the witnesses, the weight to be given to their evidence, and the burden of proof is upon the plaintiff, to establish his right to recover by a preponderance of the evidence.

If you find for the plaintiff, the form of your verdict will be:

42 "We, the jury, find for the plaintiff, Alexander Reeder, against the Texas and Pacific Railway Company, at (blank dollars)," giving the amount, and date it, and sign it, by your foreman.

Bill of Exceptions.

The defendant excepted, to the charge, because it did not submit to the jury, either the assumed risk or the contributory negligence of the plaintiff, in open court before the jury retired.

After all the evidence was introduced, and the argument of counsel was heard, the defendant requested the court to charge the jury as follows:

"Upon the law and the facts in this case, the plaintiff cannot recover, and you are instructed to return a verdict for the defendant."

The court refused to give the peremptory instruction, to which the defendant then and there excepted in open court before the jury retired, and after the court had given its main charge to the jury, the defendant, by attorney, requested each of the three following special charges, Nos. 2, 3 and 4:

No. 2. "If you find from the evidence that the plaintiff would not have been hurt if he had *rode* in the caboose instead of the stock car, you will find for the defendant."

No. 3. "If you find from the evidence that the plaintiff, Alexander Reeder, rode in the stock car with his cattle and goods, and that a caboose was attached to said train, and the conductor or operatives of said train invited the plaintiff to ride in said caboose, and that the caboose was a safer place to ride in than the stock car, you will find for the defendant company."

4. "If you find from the evidence that the caboose was a safer place to ride in than the stock car, and the plaintiff knew it, or could have known it by the use of ordinary diligence, the plaintiff cannot recover, and you will find for the defendant company."

43 The court refused to give each and all of the said three special instructions requested by the defendant, to which refusal, and each of them, the defendant by attorney then and there excepted in open court before the jury retired.

Approved and ordered filed March 13th, 1896, as part of the record in this cause.

D. E. BRYANT, *Judge.*

Endorsed: C. L., No. 435. Alexander Reeder *vs.* The Texas and Pacific Railway Company. Filed March 14th, 1896. C. Dart, clerk, by W. E. Singleton, deputy.

Motion for New Trial.

ALEXANDER REEDER	} No. 435.
<i>vs.</i>	
TEXAS AND PACIFIC RAILWAY CO.	

Now comes the defendant, The Texas and Pacific Railway Company, and moves the court to grant it a new trial herein, for the following reasons, to wit:

1. The court erred in failing to give the peremptory instructions to find for defendant.

2. The court erred in failing to give the four special charges asked by the defendant.

3. The court erred in giving the one ground upon which the plaintiff could recover, to the effect that plaintiff could recover if the train was stopped and standing still when the plaintiff got hurt, and he was hurt while the train was standing still, and while in the act of helping or getting his stock up, which was down in the stock car, because if the plaintiff was in the stock car voluntarily, instead of in the caboose, which was a safer place, and he was so notified and remained on the stock car after he was told the caboose was a safer place and invited to the caboose, he, the plaintiff, could not recover, and he was guilty of contributory negligence, and assumed the risk of his riding on the stock car instead of the caboose.

W. T. ARMISTEAD,

Attorney for Defendant, Texas and Pacific R'y Co.

Endorsed: C. L., No. 435. Alexander Reeder *vs.* The Texas and Pacific Railway Company. Filed February 4th, 1896. C. Dart, clerk, by W. E. Singleton, deputy.

ALEXANDER REEDER	}
<i>vs.</i>	
TEXAS AND PACIFIC RAILWAY CO.	

TUESDAY, *February 4th*, 1896.

This day again came the parties to this suit, by attorneys and thereupon came on to be heard defendant's motion for a new trial, and the said motion having been heard, and the court being duly advised as to the law, is of the opinion the law is against the motion, which is hereby overruled, and is so ordered, to which the defendant by its attorney then and there excepted.

ALEXANDER REEDER
 vs.
 TEXAS AND PACIFIC RAILWAY Co. }

TUESDAY, *February 4th*, 1896.

On this day, on application of the defendant, the court allowed the defendant forty days from this date to prepare and present the bill of exceptions in this cause, and this order is accordingly entered, and a bond in the meantime is waived by the plaintiff in open court and execution stayed.

45 *Petition for Writ of Error and Supersedeas.*

In the United States Circuit Court for the Eastern District of Texas,
 at Jefferson.

ALEXANDER REEDER
 vs.
 TEXAS AND PACIFIC RAILWAY Co. } 435.

To the honorable judges of the circuit court of the United States for the eastern district of Texas, at Jefferson :

Your petitioner, The Texas and Pacific Railway Company, respectfully shows to the court that Alexander Reeder recovered a judgment against the Texas and Pacific Railway Company for damages for personal injuries, in the circuit court of the United States for the eastern district of Texas, at Jefferson, Texas, on February 4th, 1896, for the sum of \$1,500.00, and all costs of suit, because it shows that in the record and proceedings, as also in the rendition of the judgment of a plea, which is in said circuit court, in this cause, a manifest error has happened, to the great damage of your petitioner, as by its complaint appears, and that forty days was allowed after the adjournment of court to perfect the bill of exceptions, and that your petitioner presents herewith said bill of exceptions and assignment of errors, and prays that your honor grant a writ of error and supersedeas on said judgment, and fix the amount of the supersedeas bond.

Respectfully submitted.

W. T. ARMISTEAD,
Attorney for the Texas and Pacific Railway Co.

The writ of error applied for above is allowed, and the same to act as a supersedeas upon the judgment, upon the approval of bond in the sum of \$3,000.00.

D. E. BRYANT, *Judge.*

March 13, 1896.

46 Endorsed : C. L., 435. Alexander Reeder vs. The Texas and Pacific Railway Company. Filed March 14th, 1896. C. Dart, clerk, by W. E. Singleton, deputy.

Assignments of Error.

In the Circuit Court of the U. S. for the Eastern District of Texas,
at Jefferson.

ALEXANDER REEDER	} No. 435.
vs.	
TEXAS & PACIFIC R'Y Co.	

Now comes the defendant, The Texas and Pacific Railway Company, by its attorney, and says that in the record and proceedings in the above-entitled cause there is manifest error, and it respectfully assigns the following errors, to wit:

1. The court erred in allowing the deposition of the plaintiff, Alexander Reeder, to be read in evidence over the objection of the defendant; because the plaintiff was present in court at the time, and afterwards testified in person.

2. The court erred in refusing to charge the jury as requested by the defendant, as follows: "Upon the law and the facts in this case, the plaintiff cannot recover, and you are instructed to return a verdict for the defendant;" because the plaintiff assumed the risk, and by riding in the stock car instead of the caboose, which he was invited to ride in, and which was prepared for his transportation, and in which he would not have been hurt, was guilty of contributory negligence, and upon all the evidence he was not entitled to recover.

3. The court erred in its main charge to the jury, as follows: "If you believe from the evidence that the plaintiff, Alexander Reeder, was riding in the stock car in which his horses and cattle and goods were being transported over the defendant's road, and that while the train was stationary, his cattle being down and
47 needed his attention, he at that time, in a prudent and careful manner attempted, or did give the horses and cattle the attention or assistance which they needed, and that the plaintiff was injured at that time by a sudden and unusual hard jerk or jolt or bumping of the car in which he was riding, through and by the negligence of the defendant company or its operatives, you will find for plaintiff;" because it was not qualified by the doctrine of assumed risk and contributory negligence of the plaintiff, in riding in the stock car instead of the caboose, which was a safer position and where he would not have been hurt.

4. The court erred in refusing to give special charge No. 2, requested by the defendant, as follows: "If you find from the evidence that the plaintiff would not have been hurt, if he had rode in the caboose instead of the stock car, you will find for the defendant;" because the caboose was the proper car for the plaintiff to ride in, and where he was invited to ride by the operatives of the defendant, and where his driver's pass required him to ride, and where he would not have been hurt if he had done so.

5. The court erred in refusing to give the third special charge re-

quested by the defendant, as follows: "If you find from the evidence that the plaintiff, Alexander Reeder, rode in the stock car with his cattle and goods, and that a caboose was attached to said train, and the conductor, or operatives of said train, invited the plaintiff to ride in said caboose, and that the caboose was a safer place to ride in than the stock car, you will find for the defendant company;" because if the plaintiff voluntarily, or for his own convenience, rode in the stock car, when a caboose was provided for him, he thereby attributed to his own injury and assumed all risk, in taking the more dangerous position in the stock car, which was proved by the uncontroverted evidence in the case.

48 6. The court erred in refusing to give the fourth special charge as requested by the defendant, as follows: "If you find from the evidence that the caboose was a safer place to ride in than the stock car, and the plaintiff knew it, or could have known it, by the use of ordinary diligence, the plaintiff cannot recover, and you will find for defendant company;" because it was established by the undisputed evidence that the caboose was a safer place, and the plaintiff was requested by the operatives to ride in the caboose, and he was guilty of contributory negligence by riding in the stock car.

Wherefore the defendant company prays the court that these assignments of error be sustained, and that the judgment be reversed and the cause remanded.

W. T. ARMISTEAD,

Attorney for the Texas and Pacific Railway Co.

Endorsed: C. L., No. 435. Alexander Reeder vs. The Texas and Pacific Railway Company. Filed March 14th, 1896. C. Dart, clerk, by W. E. Singleton, deputy.

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Texas, at Jefferson, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Alexander Reeder as plaintiff and The Texas & Pacific Railway Company as defendant, wherein judgment

49 was rendered in favor of plaintiff and against the defendant for \$1,500.00 (fifteen hundred dollars) on the 4th day of February, 1896, a manifest error hath happened, to the great damage of the said The Texas & Pacific Railway Company as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the fifth circuit, together with this writ, so that you have the same

at New Orleans, Louisiana, within 30 days from the date hereof, in the said United States circuit court of appeals, to be then and there held, and the records and proceedings aforesaid being inspected, the said United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

C. DART,

Clerk of the Circuit Court, Eastern District of Texas.

W. E. SINGLETON, *Deputy.*

Allowed by—

D. E. BRYANT, *Judge.*

March 13th, 1896.

No. 435. United States circuit court, eastern district of Texas, at Jefferson. Alexander Reeder vs. The Texas & Pacific Railway Company. Writ of error. Filed March 14th, 1896. C. Dart, clerk, by W. E. Singleton, deputy.

I, C. Dart, clerk, do hereby certify that a true and correct copy of the within writ of error has been made and filed with the record of the case in this office.

50 Given under my hand and seal of this circuit court of the United States for said eastern district of Texas at Jefferson, this the 20th day of March, 1896.

C. DART, *Clerk,*

By W. E. SINGLETON, *Deputy.*

Bond on Writ of Error.

Know all men by these presents that we, The Texas & Pacific Railway Company, a U. S. corporation, as principal, and ———, as sureties, are held and firmly bound unto Alexander Reeder, in the full and just sum of \$3,000.00 (three thousand dollars), to be paid to the said Alexander Reeder, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 10th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a term of the circuit court of the United States, in and for the eastern district of Texas, at Jefferson, in a suit pending in said court between Alexander Reeder plaintiff, and The Texas & Pacific Railway Company, defendant, cause No. 435, on the docket of said court a judgment was rendered against the said The Texas & Pacific Railway Company, in favor of plaintiff, for the sum of \$1,500.00 (fifteen hundred dollars), and all costs of said suit, and the said The Texas & Pacific Railway Company, having obtained a writ of error, and filed a copy thereof in the clerk's office of the

said court to reverse the judgement in the aforesaid suit, and a citation directed to the said Alexander Reeder, citing and admonishing him, to be and appear before the United States circuit court of appeals for the fifth circuit, to be holden at New Orleans, Louisiana, within thirty days from the date thereof: Now, the condition of the above obligation is such that if the said The Texas & Pacific Railway Company prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue. Sealed and delivered in the presence of:

THE TEXAS & PACIFIC RAIL- [SEAL.]
WAY COMPANY,

By W. T. ARMISTEAD, *Its Attorney.*

J. D. CRAWFORD.

JNO. A. FEIDLER.

S. A. SPELLINGS.

[SEAL.]

[SEAL.]

Approved by—

D. E. BRYANT, *Judge.*

March 13th, 1896.

Endorsed: C. L. No. 435. United States circuit court, eastern district of Texas, at Jefferson. Alexander Reeder vs. The Texas & Pacific Railway Company. Filed this the 14th day of March, A. D. 1896. C. Dart, clerk, by W. E. Singleton, deputy.

UNITED STATES OF AMERICA, ss:

The President of the United States to Alexander Reeder, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, within 30 days from the date hereof, pursuant to writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, at Jefferson, wherein

The Texas & Pacific Railway Company is plaintiff in error
52 and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

D. E. BRYANT, *Judge.*

Attest: C. DART, *Clerk.*

By W. A. SINGLETON, *Deputy.*

I, C. Dart, clerk of the circuit court of the United States, for the eastern district of Texas, do hereby certify that a true and correct copy of the within citation has been made and filed with the papers in the case, and is of record in this office.

Given under my hand and seal of the circuit court for the eastern district of Texas, at Jefferson, this 20th day of March, 1896.

C. DART, *Clerk*,

By W. E. SINGLETON, *Deputy*.

No. 435. — docket. United States circuit court, eastern district of Texas, at Jefferson. Alexander Reeder *vs.* The Texas & Pacific Railway Company. Citation in error. Issued March 14, 1896. C. Dart, clerk, by W. E. Singleton, deputy.

Service of the within citation is hereby waived this March 19th, 1896.

L. S. SCHLUTER,

Attorney for Defendant in Error.

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ALEXANDER REEDER

vs.

TEXAS AND PACIFIC RAILWAY COMPANY.

} C. L., No. 435.

1895.		
Aug. 16.	To fil. and enter- cert. transcript.....	\$0 40
" "	" " Agreement.....	10
" "	" " Answer.....	10
" "	" " Depositions.....	10
Sept. 23.	" Continuance by defendant.....	30
Dec. 14.	" Filing interrogatories.....	10
" "	" Making orig. copy int. & X int..	70
" "	" Making int'y and cross-int'y.....	60
" "	" Issuing two commissions.....	2 60
1896.		
Jan. 28.	" Set for trial.....	15
" "	" Fil. first amended answer....	10
" "	" Fil. first supplemental petition.....	10
Feb. 4.	" 4 special charge def't.....	40
" "	" Swearing witnesses.....	10
" "	" Swearing jury.....	10
" "	" Swearing judgment.....	10
" "	" Recording judgment.....	45
" "	" Fil. motion for new trial.....	10
" "	" Motion for new trial overruled.....	30
" "	" Fil. application 40 days.....	10
" "	" Enter order allowing 40 days.....	30
March 14.	" Fil. bill of exceptions.....	10
" "	" Fil. petition for writ of error and supersedeas.	10
" "	" Bond for writ of error.....	10
" "	" Citation in error.....	10
" "	" Fil. assignment of error.....	10
" "	" Fil. copy of writ of error.....	10
" "	" Making copy of writ of error.....	1 00
" "	" Making copy citation in error.....	1 00
" "	" Issuing original writ of error.....	1 30

To	Issuing original citation in error.....	1 30
"	Approving bond in error.....	1 70
"	Recording bond in error.....	1 00
"	Docket and indexes.....	1 00
"	Making cost bill and fil. duplicate.....	1 00
March 23.	" Making transcript, 53 pages	22 50
		<hr/>
		\$39 50

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C. L., No. 435.

In the Circuit Court of the United States for the Eastern District of Texas, at Jefferson.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Jefferson, do hereby certify that the foregoing and attached pages of manuscript numbered in the margin of said pages (from one (1) to fifty-five (55) both inclusive), contain a full, true and correct copy and transcript of the original caption, original petition, petition for removal, bond for removal, order of removal, first amended answer of defendant, first supplemental petition, judgment, bill of exceptions, motion for new trial, order overruling motion, petition for writ of error, assignment of error, writ of error, writ of error bond, citation in error, cost bill, in cause C. L. No. 435, Alexander Reeder *vs.* The Texas & Pacific Railway Company, all of which appears from the records of said court, now in office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the circuit court of the United States of America for the eastern district of Texas, at Jefferson, at my office in said city of Jefferson, this 21st day of March, A. D. 1896.

C. DART, *Clerk*,
By W. A. SINGLETON, *Deputy*.

55 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1895.

TUESDAY, June 9, 1896.

(*Extract from Minutes.*)

THE TEXAS & PACIFIC RAILWAY COMPANY, Plaintiff in Error,	}
v.	
ALEXANDER REEDER, Defendant in Error.	}

This cause was regularly called this day and submitted to the court upon briefs of counsel heretofore filed.

56 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1895.

MONDAY, June 15, 1896.

(*Extract from Minutes.*)

TEXAS & PACIFIC RAILWAY COMPANY, Plaintiff in Error, }
v.
ALEXANDER REEDER, Defendant in Error. }

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Texas and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed at the cost of plaintiff in error.

57 *Petition for Writ of Error.*

United States Circuit Court of Appeals for the Fifth Circuit.

THE TEXAS AND PACIFIC RAILWAY COMPANY, Plaintiff in Error, }
vs. } No. —.
ALEXANDER REEDER, Defendant in Error.

To the Honorable Melville W. Fuller, Chief Justice, or to any associate justice of the Supreme Court of the United States:

Now comes the Texas and Pacific Railway Company, by its attorney, and complains that in the record and proceedings, and also in the rendition of the judgment of the United States circuit court of appeals for the fifth circuit, sitting at New Orleans, in the above styled and numbered cause, on the 15 day of June, 1896, affirming the judgment of the United States circuit court for the eastern district of Texas in said cause, manifest error hath intervened, to the great damage of the said The Texas and Pacific

58 Railway Company; that the jurisdiction of the circuit court for the eastern district of Texas in this cause depended upon the fact that The Texas and Pacific Railway Company, defendant therein, was a corporation created by an act of Congress; that the amount involved herein and the matter in controversy exceeds the sum of one thousand dollars, besides costs, and this is not a case in which the jurisdiction of the circuit court of appeals is made final.

Wherefore it prays for allowance of writ of error, to the end that this cause and said judgment may be carried to the Supreme Court of the United States, and it prays for supersedeas of said judgment and such other process as may cause the same to be corrected by the said Supreme Court.

(Signed)

T. J. FREEMAN,
Attorney for the Texas & Pacific Railway Co.

Writ of error and supersedeas allowed and bond fixed at the sum of \$3,000 this the 1st day of July, 1896.

(Signed) JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

Endorsed: Filed June 25, 1896. J. M. McKee, clerk.

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Assignment of Errors.

United States Circuit Court of Appeals for the Fifth Circuit.

THE TEXAS AND PACIFIC RAILWAY COMPANY, Plaintiff in	} No. —.
Error,	
vs.	
ALEXANDER REEDER, Defendant in Error.	

Now comes The Texas and Pacific Railway Company, plaintiff in error, by its attorney, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

The circuit court of appeals erred in its judgment affirming the judgment of the circuit court for the eastern district of Texas.

II.

The circuit court of appeals erred in its judgment affirming the judgment of the circuit court for the eastern district of Texas and in holding that said court committed no error in refusing to give special charge asked by plaintiff in error which is as follows:

"Upon the law and the facts in this case the plaintiff cannot recover, and you are instructed to return a verdict for the defendant," because the plaintiff assumed the risk and by riding in the stock car instead of the caboose, which he was invited to ride in and which was prepared for his transportation and in which he would not have been hurt, was guilty of contributory negligence, and upon all the evidence he was not entitled to recover.

III.

The circuit court of appeals erred in its judgment affirming the judgment of the circuit court for the eastern district of Texas and in holding that said court committed no error in that portion of its main charge which is as follows:

"If you believe from the evidence that the plaintiff, Alexander Reeder, was riding in the stock car in which his horses and cattle and goods were being transported over the defendant's road, and that while the train was stationary, his cattle being down and needed his attention, he at that time, in a prudent and careful manner, attempted or did give the horses and cattle the attention or assistance which they needed, and that the plaintiff was injured at that time by a sudden and unusual hard jerk or jolt

or bumping of the car in which he was riding through and by the negligence of the defendant company or its operatives, you will find for plaintiff," because it was not qualified by the doctrine of assumed risk and contributory negligence of the plaintiff in riding in the stock car instead of the caboose, which was a safer position and where he would not have been hurt.

IV.

The circuit court of appeals erred in its judgment affirming the judgment of the circuit court for the eastern district of Texas and in holding that said court committed no error in refusing to give special charge asked by plaintiff in error which is as follows :

" If you find from the evidence that the plaintiff would not have been hurt if he had *rode* in the caboose instead of the stock car, you will find for the defendant," because the caboose was the proper car for the plaintiff to ride in, and where he was invited to ride by the operatives of the defendant, and where his drover's pass required him to ride, and where he would not have been hurt if he had *done so*.

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V.

The circuit court of appeals erred in its judgment affirming the judgment of the circuit court for the eastern district of Texas and in holding that said court committed no error in refusing to give special charge asked by plaintiff in error which is as follows :

" If you find from the evidence that the plaintiff, Alexander Reeder, rode in the stock car with his cattle and goods, and that a caboose was attached to said train and the conductor or operatives of said train invited the plaintiff to ride in said caboose, and that the caboose was a safer place to ride in than the stock car, you will find for the defendant company," because, if the plaintiff voluntarily or for his own convenience rode in the stock car when a caboose was provided for him, he thereby contributed to his own injury and assumed all risk in taking the more dangerous position in the stock car, which was proved by the uncontroverted evidence in the case.

VI.

The circuit court of appeals erred in its judgment affirming the judgment of the circuit court for the eastern district of Texas and in holding that said court committed no error in refusing to give special charge asked by plaintiff in error which is as follows :

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" If you find from the evidence that the caboose was a safer place to ride in than the stock car and the plaintiff knew it or could have known it by the use of ordinary diligence, the plaintiff cannot recover, and you will find for defendant company," because it was established by the undisputed evidence that the caboose was a safer place, and the plaintiff was requested by the operatives to ride in the caboose, and he was guilty of contributory negligence by riding in the stock car.

Wherefore The Texas and Pacific Railway Company, plaintiff in error, prays that said judgment be reversed; and it will ever pray.

(Signed)

T. J. FREEMAN,

Attorney for The Texas & Pacific R'y Co., Plaintiff in Error.

Endorsed: June 25, 1896. J. M. McKee, clerk.

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Writ of Error Bond.

Know all men by these presents that we, The Texas and Pacific Railway Company, a corporation duly incorporated, as principal, and George J. Gould, of Lakewood, New Jersey, as surety, are held and firmly bound unto Alexander Reeder in the full and just sum of three thousand dollars (\$3,000), to be paid to the said Alexander Reeder, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this the 30th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a regular term of the United States circuit court in and for the eastern district of Texas, sitting at Jefferson, at the January term, 1896, in a suit pending in said court between Alexander Reeder, plaintiff, and The Texas and Pacific Railway Company, defendant, a judgment was rendered against the said The Texas and Pacific Railway Company for the sum of one thousand five hundred dollars (\$1,500), besides costs of suit; and

65 Whereas from said judgment the said The Texas and Pacific Railway Company duly obtained a writ of error from the United States circuit court of appeals for the fifth circuit, which court on the 15th day of June, 1896, rendered a judgment affirming said judgment in all particulars; and

Whereas the said The Texas and Pacific Railway Company has sued out a writ of error from the Supreme Court of the United States and filed a copy thereof in the aforesaid suit, and also a citation directed to the said Alexander Reeder, citing and admonishing him to be and appear at said Supreme Court of the United States, at Washington, within thirty (30) days from the date thereof;

Now, the condition of the above obligation is such that if the said The Texas and Pacific R'y Co. shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed)

THE TEXAS AND PACIFIC
RAILWAY COMPANY,

[SEAL.]

By GEO. J. GOULD, *President.*

(Signed)

GEO. J. GOULD.

[SEAL.]

66 Attest: (Signed) C. E. SATTERLEE, *Sec'y.*

Witness:

(Signed) D. D. DUNCAN.

The foregoing bond is approved, to operate as a supersedeas.
July 1st, 1896.

(Signed)

JOHN M. HARLAN,

Associate Justice of the Supreme Court of the United States.

Endorsed: Filed July 3, 1896. J. M. McKee, clerk.

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Writ of Error.

UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals, before you or some of you, between The Texas and Pacific Railway Company, plaintiff in error, and Alexander Reeder, defendant in error, a manifest error hath happened, to the great damage of the said The Texas and Pacific Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should
68 be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the United States, the first day of July, in the year of our Lord one thousand eight hundred and ninety-six.

(Signed)

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

Allowed by—

(Signed) JOHN M. HARLAN,

*Associate Justice of the Supreme Court
of the United States.*

Endorsed: Filed July 3, 1896. J. M. McKee, clerk.

69 United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 68 pages, numbered from 2 to 69, inclusive, contain a true copy of the records, pleas, process, proceedings, and all papers in the case of The Texas & Pacific Railway Company, plaintiff in error, v. Alexander Reeder,

defendant in error, No. 484, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I, hereunto
Seal United States Circuit Court of Appeals, Fifth
Circuit. subscribe my name and affix the seal
of said United States circuit court of
appeals, at the city of New Orleans,
this 21 day of July, A. D. 1896.

J. M. McKEE,
*Clerk of the United States Circuit Court of
Appeals for the Fifth Circuit.*

70 UNITED STATES OF AMERICA, ss :

To Alexander Reeder or his attorney of record, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the fifth circuit, wherein The Texas and Pacific Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this 1st day of July, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

71 [Endorsed:] 16,347. Reeder. Copy of this citation waived,
and we hereby accept service of the same this the 8th day
July, 1896. Ewing & Ring, att'ys for Alexander Reeder. Filed
July 11, 1896. J. M. McKee, clk.

Endorsed on cover: Case No. 16,347. U. S. circuit court of ap-
peals, 5th circuit. Term No., 208. The Texas & Pacific Railway
Company, plaintiff in error, vs. Alexander Reeder. Filed July 29,
1896.